



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0136-201162; FRL-9662-8]

Approval and Promulgation of Implementation Plans: Georgia; Approval of Substitution for Transportation Control Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: EPA is making an administrative change to update the Code of Federal Regulations (CFR) to reflect a change made to the Georgia State Implementation Plan (SIP) on November 5, 2009, as a result of EPA's concurrence on a substitute transportation control measure (TCM) for the Atlanta portion of the Georgia SIP. On February 5, 2010, the State of Georgia, through the Environmental Protection Division (EPD), submitted a revision to the Georgia SIP requesting that EPA update its SIP to reflect a substitution of a TCM. The substitution was made pursuant to the TCM substitution provisions contained in Clean Air Act (CAA). EPA concurred on this substitution on November 5, 2009. In this administrative action, EPA is updating the non-regulatory provisions of the Georgia SIP to reflect the substitution. In summary, the substitution that EPA concurred on was a conversion of high occupancy vehicle (HOV) lanes to high occupancy toll lanes (HOT). EPA has determined that this action falls under the "good cause" exemption in the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA).

DATES: This action is effective [Insert date of publication in the Federal Register].

ADDRESSES: SIP materials which are incorporated by reference into 40 Code of Federal Regulations (CFR) part 52 are available for inspection at the following location: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303. Publicly available materials are available either electronically in www.regulations.gov or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Dianna B. Smith at the above Region 4 address or at (404) 562-9207. Ms. Smith may also be contacted via electronic mail at: smith.dianna@epa.gov.

SUPPLEMENTARY INFORMATION:

On November 5, 2009, EPA issued a concurrence letter to Georgia stating that the substitution of a HOT lane TCM for an existing HOV lane TCM met the CAA section 176(c)(8) requirements for substituting TCMs in an area's approved SIP. *See also* EPA's Guidance for Implementing the CAA section 176(c)(8) Transportation Control Measure Substitution and Addition Provision contained in the Safe, Accountable, Flexible, Efficient Transportation Equity

Act: A Legacy for Users which was signed into law on August 10, 2005, dated January 2009.

This substitution was an update to TCMs previously approved on March 18, 1999, and April 26, 1999. As a part of the concurrence process, the public was provided an opportunity to comment on proposed TCM substitution. Public notice and comment was provided by the Atlanta metropolitan planning organization, Atlanta Regional Commission (ARC), during the revision to the transportation improvement program to incorporate the HOT lane substitution project. The public notice was published in the Daily Report and on the ARC webpage at: [www.](http://www.atlantaregional.com)

atlantaregional.com. Through this concurrence process, EPA determined that the requirements of CAA section 176(c)(8) were met, including the requirement that the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced.

Upon EPA's concurrence, the HOT lane substitution took effect as a matter of federal law. A copy of EPA's concurrence letter is included in the Docket for this action. This letter can be accessed at www.regulations.gov using Docket ID No. EPA-R04-OAR-2012-0136. In accordance with the requirements for TCM substitution, on February 5, 2010, EPD submitted a request for EPA to update the Atlanta portion of the Georgia SIP to reflect EPA's previous approval of the TCM substitution of the HOV lane with the HOT lane conversion TCM in its SIP (the subject of this administrative change). Today, EPA is taking administrative action to update the non-regulatory provisions of the Georgia SIP in 40 CFR 52.570(e) to reflect EPA's concurrence on the substitution of a TCM for the conversion of HOV lanes to HOT lanes:

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date
1. High Occupancy Vehicle (HOV) lane on I-85 from Chamblee-Tucker Road to State	Atlanta Metropolitan Area	11/15/93 and amended on 6/17/96 and 02/05/10

Road 316. High Occupancy Toll (HOT) lane on I-85 from Chamblee-Tucker Road to State Road 316.		
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EPA has determined that today’s action falls under the “good cause” exemption in the section 553(b)(3)(B) of the APA which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today’s administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs.

Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment for this administrative action is “unnecessary” because the substitution was made through the process included in CAA section 176(c)(8) and because the public already had an opportunity to comment on this substitution during the public comment period prior to approval of the substitution. Immediate notice of this action in the Federal Register benefits the public by providing the public notice of the updated Georgia SIP Compilation and “Identification of Plan” portion of the Federal Register.

Statutory and Executive Order Reviews:

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this administrative action is not a "significant regulatory action" and is therefore not subject to review by the Office of

Management and Budget. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 et seq.), or to sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA.

This administrative action also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This administrative action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This administrative action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The administrative action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This administrative action

does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

B. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA) (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's administrative action simply codifies a provision which is already in effect as a matter of law in Federal and approved state programs. 5 U.S.C. 808(2). These announced actions were effective upon EPA's concurrence. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this action in the Federal Register. This update to Georgia's SIP Compilation is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 29, 2012

A. Stanley Meiburg,
Acting Regional Administrator,
Region 4.

40 CFR part 52, is amended as follows:

PART 52--[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L – Georgia

2. Section 52.570(e), is amended by revising the first entry “1. High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316” to read as follows:

§ 52.570 Identification of plan.

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(e) * * *

EPA-Approved Georgia non-regulatory provisions.

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
1. High Occupancy Vehicle (HOV) lane on I–85 from Chamblee-Tucker Road to State Road 316. High Occupancy Toll (HOT) lane on I-85 from Chamblee-Tucker Road to State Road 316	Atlanta Metropolitan Area	11/15/93 and amended on 6/17/96 and 2/5/10	3/18/99, 4/26/99 and 11/5/09
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